

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

04-CR-6128L

v.

SANTO A. CASTILLO-MARTINEZ a/k/a
RAYMOND REYES,

Defendant.

This Court referred all pretrial matters in the above-reference criminal case to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Defendant, Santo A. Castillo-Martinez, filed motions challenging evidence intercepted over two court-authorized wiretaps. Magistrate Judge Payson reviewed the submissions and issued a Report and Recommendation (Dkt. #348) recommending that defendant's motions to suppress wiretap communications be denied.

Defendant duly filed Objections (Dkt. #350) to Magistrate Judge Payson's Report and Recommendation.

As referenced by Magistrate Judge Payson, there were several court-authorized wiretap orders in the case. Only two are at issue here. One was issued in the Northern District of Georgia for cellular telephone number 404-784-2708. The other was a cellular telephone number 281-772-1940.

Defendant raises several objections. He claims that the warrants were not supported by probable cause, that the officers failed to minimize the intercepted conversations and that law enforcement officials failed to exhaust normal investigative techniques. Magistrate Judge Payson found all of those contentions to be without merit. I agree with her assessment.

Concerning probable cause, after noting defendant's "remarkable lack of specificity" in challenging the warrants, Magistrate Judge Payson discussed in four pages of the Report and Recommendation her basis for concluding that there was ample probable cause. I agree with Magistrate Judge Payson's assessment that the information supplied to the issuing judge clearly established probable cause to believe that narcotics-related conversations would be intercepted. These warrants were but two in a series of warrants that had been issued over the course of this investigation which involved many officers and spanned several different jurisdictions. In sum, I agree with Magistrate Judge Payson that there was ample probable cause to support the warrants. I also agree with Magistrate Judge Payson that there is no evidence to suggest that the law enforcement officers executing the wiretaps did not rely in good faith on the validity of the warrants. Therefore, under *United States v. Leon*, 468 U.S. 897 (1984), there is further justification to deny the motions to suppress.

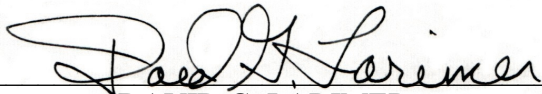
Concerning minimization, Magistrate Judge Payson determined that the defendant failed to demonstrate any privacy interest in either of the two tapped telephone lines and, therefore, he lacked standing to challenge issuance of the warrants. I agree with that assessment for the reasons set forth by Magistrate Judge Payson, and I also concur with her alternate conclusion that on the merits, defendant has failed to show any failure to properly minimize the intercepted communications.

There is also no basis to suppress the conversations because of any failure to utilize other investigative techniques. I agree with Magistrate Judge Payson's assessment that the showing set forth in the affidavits to obtain the warrant was more than sufficient to demonstrate that traditional investigative techniques had been utilized to some extent but were unlikely to achieve all of the goals of the investigation. Magistrate Judge Payson clearly discussed these matters, and I find no basis to change or modify her recitation of the facts and conclusions of law.

CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson (Dkt. #348) in its entirety. Defendant's motion to suppress communications intercepted over two court-authorized wiretaps (Dkt. #314) is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 2, 2007.